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Environmental Quality Council

STATE OF MONTANA

EQNEWS

Box 215, Capitol Station, Helena, MT 59601

Vol. 2, No. 1

Senator Elmer Flynn, Chairman

July 8, 1974

John W. Reuss, Executive Director

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EQC LEGAL MEMO UPDATES MEPA SCOPE

A recent legal memorandum prepared by EQC attorney Richard Klinger suggests that state agencies are taking too narrow a view of MEPA's requirements that questions of environmental quality must be considered when agencies undertake to prepare Environmental Impact Statements (EIS). In this instance -- the Prickly Peak Creek Water Diversion Proposal -- the Department of Natural Resources (DNR) reviewed a request for a permit allowing water diversion under the Montana Water Use Act. In the draft EIS, Natural Resources expressed concern over a number of environmental factors but concluded that "Environmental quality is unquestionably a valid concern, but one without the binding force of law." (p. 39).

In his detailed memo, Klinger reviews recent litigation in the federal court system as well as court action in states having "little NEPAs" similar to the Montana Environmental Policy Act. A major portion of the memo is a summary of important legal decisions tracing the movement of the courts from reviewing agency compliance with EIS procedures to a review of the adequacy of the substantive contents of EISs.

The EQC memo contends that "Section 89-866(3) of the Water Use Act together with Section 69-6502 through 69-6507 of MEPA provide the Department not only with the legal basis for denying a water permit where the impact of issuing such a permit would have a destructive impact on the environment, but perhaps the obligation to do so."

EQC ENERGY POLICY STUDY STAFF CHANGE

Mr. Walter Enderlin has resigned his position as staff engineer with EQC to accept a position with Battelle Northwest Laboratories, Richland, Washington, as

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Helena, Montana 59601

a senior research engineer in their Engineering Technology Department. He will be involved in research and development of advanced types of mining equipment and new mining methods. Mr. Enderlin's duties as coordinator of the EQC Energy Policy Study will be assumed by Ms. Dana H. Martin.

Ms. Martin was a WICHE intern for EQC last summer, studying methods of energy conservation for Montana. Prior to joining EQC, Ms. Martin was assisting Lt. Gov. Christiansen in inventorying statewide research on coal. She is completing a master's degree in environmental engineering at Stanford University.

NEW ENVIRONMENTAL IMPACT STATEMENTS JUNE 16-30

Date Received	STATE --- Subject	Originating Agency	
6-17-74	Bandmann Bridge and Approaches. Replacement of an existing bridge over the Clark Fork and construction of approaches to the bridge. Approx. 3 mi. e. of Missoula.	DH	N
6-18-74	Big Timber North Railroad Underpass Safety Upgrading. 0.8 mi. n. of Big Timber.	DH	N
6-18-74	Lion Mountain Subdivision #3. 24 lots on 16 acres. Approx. 2 mi. n.w. of Whitefish. Average lot size 0.5 to 0.9 acres.	DHES Klspl.	N
6-18-74	Three Forks Outfitters. Proposed licensed campground facility near Glacier Park in Flathead Co. 40 acres, 40 spaces.	DHES Klspl.	N
6-18-74	The Walikonis Farms. Request for a livestock waste control facility permit. Located w. of Medicine Lake. Max. capacity is approx. 500 animals.	DHES	N
6-18-74	Hindman Hog Company. Request for a livestock waste control facility permit. Located s. of Fromberg. Max. capacity is approx. 900 animals.	DHES	N
6-18-74	The Northern Montana Research Center. Request for a livestock waste control facility permit. Located 6 mi. s.w. of Havre. Max. capacity is approx. 100 head of cattle.	DHES	N
6-18-74	Russell Johnson Swine Operation. Request for a livestock waste control facility permit. Located n. of Cut Bank. Max. capacity is approx. 1,500 animals.	DHES	N

New Environmental Impact Statements (continued)

Date Received	STATE --- Subject	Originating Agency	
6-20-74	Rancho Vista Addition, Horse Butte Acres Subdivision No. 2, and Horse Butte Estates. Subdivisions in Gallatin Co. requesting subdivision plat approval. 210.64 acres divided into 47 lots.	DHES	N
6-20-74	York Gulch Minor Subdivision. Proposed subdivision in L. & C. Co. 8.44 acres, 5 lots.	DHES	N
6-20-74	Hoerner-Waldorf Pulp and Paper Mill at Missoula. H-W has applied for a permit to expand capacity of its mill from 1150 tons per day of paper products to 1850 tons per day.	DHES	D
6-21-74	Packer Gulch Terrace. Proposed subdivision in Granite Co. approx. 11 mi. w. of Drummond. 26.8 acres, 50 cabin sites.	DHES	N
6-21-74	Continuous delineation projects. Proposed project is located throughout the state. Counties which now have intermittent delineation (only the curves, not the tangents) will have delineators added to the rest of the roadway.	DH	N
6-24-74	Russell Point Ranch Tracts. Proposed subdivision located in Judith Basin Co. approx. 16 mi. s.w. of Utica. 36.5 acres, 23 tracts.	DHES	N
6-25-74	Rocky Ridge Trailer Court and Campground. 81 permanent trailer spaces on 12.5 acres and 89 travel trailer spaces on 7.2 acres as a K.O.A. campground. 4 mi. e. of Kalispell.	DHES	D
6-26-74	Gilbert Amen Confined Livestock Operation. Request for a livestock waste control facility permit. W. of Billings. Max. capacity is approx. 400 feeder cattle.	DHES	N
6-26-74	Cedar Grove Ranch. Proposed subdivision in Sanders Co. 30 mi. s. of Troy. 36 lots, 49.3 acres. Lots range in size from .5 acre to 1+ acre.	DHES Klspl.	N

New Environmental Impact Statements (continued)

Date Received	STATE --- Subject	Originating Agency	
6-28-74	Amend. to Western Energy Co. Surface Mining Permit #00003. Addition of 90.61 acres and change of classification of 2.53 acres from assoc. disturbance to mining level. Called Pit 6 extension.	DSL	N
6-28-74	Beaver Creek South Subdivision located in Gallatin Co. The owner, Beaver Creek South, Inc., intends to divide approx. 95 acres into 72 lots for single- and multi-family residences, and a max. of 7 1/2 acres along U.S. Hwy 191 for a neighborhood commerical area.	DHES	F

Date Received	FEDERAL --- Subject	Originating Agency	
6-14-74	Libby Dam and Lake Koocanusa. Kootenai River, MT. Supplement I. Installation of 4 additional 105 megawatt generators and turbines at the main Libby Dam plus construction of a reregulating dam, reservoir and control works on Kootenai River 10 mi. downstream. Reregulating dam embankment would be of earth and rockfill construction, stand 75 ft. above river bottom, and extend 600 ft. across Kootenai River.	USCE/ BPP/ DH	D

D - draft statement
EW - emergency waiver
F - final statement
N - negative declaration

DHES - Dept. of Health & Environmental Sciences
DH - Department of Highways
DSL - Dept. of State Lands
USCE/BPP/DH - Corps of Engrs./ Budget and Program Planning/ Dept. of Highways

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